(2)

NO. 86-661

Supreme Court, U.S.
F I L E D
NOV 13 1986
JOSEPH F. SPANIOL, JR.
CLERK

**IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1986**

JOHN PATRICK ALLEN, and ALEXANDRA GEORGEO,

Petitioners,

V.

OFFICE OF PERSONNEL MANAGEMENT, FAA,

Respondent.

SUPPLEMENTAL APPENDIX

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UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

GERALD L. AGOLINI, ET AL 1

CASE NO. AT075281F2351
v. DATE: January 14, 1983

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

INTRODUCTION

Appellants filed appeals from the agency's actions removing them from the position of Air Traffic Control Specialist.

JURISDICTION

The actions appealed were effected under subpart D of Part 752 of the Office of Personnel Management rgulations, which was promulgated pursuant to OPM's authority under 5 U.S.C. § 7514. The record reflects

that appellants were covered employees as defined by subpart D, and were entitled to appeal these actions to the Board. See 5 U.S.C. §§7511(a)(1)(A), 7512, 7513(d); 5 C.F.R. §§752.401(a), 752.401(b)(1), 752.405(a). I therefore find that the appeals are properly before the Board for adjudication.

ANALYSIS AND FINDINGS

The agency proposed appellants' removals on the basis of two charges: (1) participation in a strike against the United States Government in violation of 5 U.S.C. §7311 and 18 U.S.C. §1918; and (2) unauthorized absence. Both charges stem from appellants' failure to report for duty on various dates in August of 1981.

The Board has taken official notice of the fact that members of the Professional Air Traffic Controllers Organization (PATCO) engaged in an illegal strike against the Federal Government from August 3, 1981 through at least August 6, 1981. Ketchem v. Department of Transportation, MSPB Docket No. DAO75281F0713 (5/28/82). In addition, the Board has found that an employee's unauthorized absence during the period of such a strike may constitute a prima facie case of said employee's participation therein. Schapansky v. Department of Transportation, MSPB Docket No. DAO75281F1130 (10/28/82); Jones v.Tennessee Valley Authority, MSPB Docket No. ATO7528010300 (2/19/82); Ducket and Yardley v. Tennessee Valley Authority, MSPB Docket No. ATO7528010325 (2/19/82).

Striking has been defined as the "actual refusal in concert with others to provide services to one's employer." United Federation of Postal Clerks v. Blount, 325 F. Supp. 879 (D.D.C.), affirmed, 404 U.S. 802 (1971). In Ketchem, supra at page 9, the Board stated that where an employee is charged with participation in the PATCO strike "on dates subsequent to August 6, 1981, the agency bears the burden of proving by direct evidence that a strike was in fact in progress on the date charged, and that the employee could have returned to work on that date." In this regard, there is no dispute that an employee who failed to report for his or her "deadline shift" (the first regularly scheduled shift after 11:00 a.m. on August 5, 1981), would not

have been returned to an active duty status if he or she attempted to return after his or her deadline had passed. While picketing and other "strike activity" continued for several weeks, or even months, after August 6, 1981, the agency effectively ended any particular employee's participation in the strike after the employee had missed the "deadline shift", and no longer had an opportunity to "provide services", per se. My findings below with respect to the striking charge will therefore be limited to each appellant's duty days from August 3, 1981 through the date of his or her "deadline shift". This same rationale, however, is inapplicable to the charge of unauthorized absence. Notwithstanding the fact than an employee would not have been placed in an active duty

status if he or she attempted to return to work after his or her deadline had passed, such an employee could have been entitled to be placed in a non-duty status, with pay. At a minumum , any absences on and after the date that the agency rebuffed his or her offer to return to work would be "authorized", regardless of the pay or leave status recorded by the agency. However, unless the employee appeared for duty, or otherwise communicated to the agency a desire to return to work, I find that the agency

could validly charge the employee with unauthorized absence on previously scheduled duty days subsequent to his or her deadline.

The agency presented the testimony of the Chief or Deputy Chief of each of

the three facilities involved, and/or documentary evidence (watch schedules, sign-on logs, memoranda and/or time and attendance records) to establish that each of the appellants was absent without authorization on one or more of her "deadline shift". I find this evidence to be sufficient to establish a prima facie case of strike participation with respect to each of the appellants. In light of this finding, the burden of persuasion now shifts to each appellant to show that he or she "had no knowledge of the existence of the strike or to demonstrate that his [or her] absence was due to some factor other than intentional participation in the strike." Schapansky , supra, at 6. In this regard, several of the appellants did allege specific reasons for their absences. Each will be addressed below.

William Sedgwick became a member of PATCO's national negotiating team in June of 1980 and, prior to August of 1981, he made several trips to Washington, D.C. in connection with contract negotiations. On each of these occasions, he received prior approval from his Chief John Atkinson, who authorized the issuance of a Government Travel Request (GTR) for appellant's airline tickets and, if time allowed, the issuance of a travel advance. Appellant claims that he went to Washington, D. C. on August 2, 1981 based upon a July 30 or 31, 1981 communication from Robert Poli, President of PATCO National. He testified that he did not request Mr. Atkinson's approval of the trip because Mr. Poli had told him to keep

it a "secret", and because Mr. Atkinson had once told him that he need not get his approval in advance if he got a "last minute" call. He also testified that he believed himself to be on admininistrative leave on and after August 3, 1981.

I find Mr. Sedgwick's explanation of his absences to be incredible for several reasons. There was no "last minute" notice of the trip. Appellant knew of the trip 2-3 days prior to his departure, yet did not request Mr. Atkinson's approval. Nor did he subsequently contact Mr. Atkinson to obtain approval as he was supposed to under his own "last minute" scenario. In addition, the agency submitted an affidavit from the Director of FAA's Office of Labor Relations who stated that PATCO had not requested nor had

his office approved, the attendance of Mr. Sedgwick at any negotiating sessions after June of 1981. (Agency Ex. 4). On cross examination, appellant admitted that he attended no negotiating sessions in August of 1981, but rather was waiting to review any proposed contract. Had the trip been authorized, there would have been no reason to keep it a "secret". I therefore find that appellant's trip and his absences on and after August 3, 1981, were unauthorized, and that appellant was so aware. I further find that his absences were not the result of any belief on his part that

he was on administrative leave. Harold Jacobs called his facility on August 5, 1981 and was informed that his previously approved annual leave was cancelled and that he was to report for his next scheduled shift at 8:00

a.m. on August 7, 1981. Appellant testified that he arrived home at approximately 1:00 a.m. following a lengthy drive from Pennsylvania. He stated that he felt that he would be too tired to work at 8:00 a.m., and that he attempted to call his facility, but the line was busy. He then called a member of his carpool who told him that he should come down to the union hall to find out what had been going on over the past several days. Appellant testified that he went to the union hall at approximately 3:00 a.m., and heard that some controllers had been told that they were already fired. He claims that he therefore believed that he had also been fired, and proceeded to return home and go to bed.

Mr. Jacobs' stated reason for not

reporting for work on and after August 7, 1981 could be termed ridiculous, but it is, at best, incredible. He admits that he had been told that he could, and should, report for duty on August 7, 1981. Yet he allegedly relied upon hearsay and rumors regarding other controllers' situations in deciding not to report for duty on August 7, 1981 or any date thereafter, or even contact the facility again. No reasonable person, particularly one such as appellant with over 25 years of service, would effectively abandon his employment on the basis of such information. I therefore find that appellant's absences on and after August 7, 1981 were not the result of any belief that he had been fired prior to that date.

James Rushing was on sick leave on

July 31 and August 1, 1981, and had a regular day off on August 2, 1981. He claims that he continued to be ill, and believed himself to still be on approved sick leave until he allegedly attempted to return to work on August 6, 1981. However, appellant's team supervisor testified, and a call record in the file reflects, that he informed appellant on August 1, 1981 that in the event of a strike on August 3, 1981, all leave would be cancelled and that appellant was required to either call in or report for duty. Appellant did neither. Moreover, appellant did not mention his claim of continued illness and entitlement to sick leave in either his reply to the proposal notice or in his appeal to the Board. I therefore find that appellant did not in fact believe himself to be on approved sick

leave at any time after August 2, 1981.

As noted above, Mr. Rushing claimed that he attempted to return to work on August 6, 1981. Mr. David Boyce makes the same claim. Both testified that they were turned away by a guard, and thereby, prevented from reporting for their "deadline shifts". At the outset, I note that neither one of them bothered to include any information regarding these alleged incidents in either their replies to the proposal notices or in their petitions for appeal to the Board.

Both admit that they did not identify themselves to the guard, who was not an employee of the agency, and neither one bothered to call the facility after he was allegedly turned away. In addition, Mr. Reisterer, an agency

employee who was involved in security at the facility, testified that the contract guards on the gate were not authorized to turn anyone away. He testifed that the guards had a list of those persons who had already missed their deadlines, and that if any of those persons wanted to enter, the guards were to contact agency security personnel. If either appellant had, in fact, attempted to report prior to his deadline, he would have been allowed to enter. In light of the foregoing, particularly the inordinate amount of time which passed before either appellant raised this claim, I find that neither's absence on and after August 6, 1981 was the result of an inability to enter the facility.

Five of the appellants (Buesser, Gammon, J. Harris, O'Dea and Spinks)

claim that they were on previously-approved leave on some of the dates covered by their proposal notices. However, three of them (J. Harris, O'Dea and Spinks) were informed prior to August 3, 1981 that in the event of a strike, all leave would be cancelled. (Agency Files, Tabs 13). The agency's attempts to communicate this same information to appellants Buesser and Gammon was apparently unsuccessful. However, both of them were clearly due to return to duty on August 9, 1981, the day before the issuance of their proposal notices. None of these appellants testified at the hearing before me, nor otherwise presented evidence regarding the reasons for their absences from duty. I therefore find that each of them was absent without authorization during the

strike.

With respect to those appellants whose leave was cancelled by the agency, their representative contends that such cancellations were not permitted under the agency's negotiated agreement with PATCO. (Appellants' Ex. FF) I note that section 5 of Article 28 of the Agreement does state that approval of leave "shall not be subject to conditional curcumstances." However, section 1 of the same Article provides that leave may be cancelled in the event of an "operational emergency". Moreover, the agency points out that Article 41 of the Agreement provides that the agency retains all rights preserved under 5 U.S.C. a7106, which provides, in part, that an agency may "take whatever actions may be necessary to

carry out the agency mission during emergencies." I can think of few other situations which would better qualify as an emergency than the mass absence of the majority of an agency's work force. I therefore find that the agency could, and did, validly cancel previously-approved leave.

As to all appellants who were formerly employed at the Jacksonville Air Route Traffic Control Center (Hilliard), their representative argued that the time and attendance record in each appellant's file was potentially inaccurate; that the watch schedules were not needed to verify their accuracy; and that the agency had not included them in its adverse action files. In this regard, the Center Chief testified that he did not rely on the watch schedules during his

decision-making process. However, during the hearing, the agency did produce the appropriate watch schedule for each of the 65 appellants in question, and their representative had an opportunity review them. He subsequently submitted the watch schedules of four of the appellants (Buesser, Gammon, J. Harris and Jacobs), and I did consider them in reaching my findings above. In light of the fact that the representative did not submit the remaining 61 watch schedules, I presume that he felt that they contained no exculpatory information.

I find that the agency has established a prima facie case of strike participation with respect to all of the appellants, and that none of them has presented persuasive evidence in

rebuttal. The same evidence establishes that appellants were absent without authorization, as alleged. I therefore find that the charges as set forth in the proposal notices are supported by a preponderance of the evidence, and are sustained.

Appellants raise several procedural arguments. In this regard, they bear the burden of proving error by the agency in the application of its procedures, and that said error was harmful. 5 U.S.C. §7701(c)(2)(A); 5 C.F.R. §1201.56(b)(1). They must show

that in the absence or cure of such error, the agency might have reached a different conclusion. 5 C.F.R. §1201.56(c)(3); Parker v. Defense Logistics Agency, 1 MSPB 489 (1980).

Appellants contend that they received insufficient notice of the agency's actions. In this regard, 5 U.S.C. §7513(b)(1) provides that an employee is entitled to "at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action." In these cases, the agency did have reason to believe that appellants had violated 18 U.S.C. §1918, a statute authorizing imprisonment for up to one year and a day. I therefore find that the agency was warranted in shortening the notice periods in the instant cases, and that no procedural error was involved, as alleged. Schapansky, supra at 8.

Numerous appellants claim that they received less than seven days in which to present their oral replies, and that this constituted reversible error on the part of the agency. 5 U.S.C. §7513(b)(2) provides that an employee is entitled to "a reasonable time, but not less than 7 days" to reply orally and in writing. In Ratley v. Department of the Army, MSPB Docket NO. ATO7528110338 (9/17/82), the Board stated than an action "taken without complying with the procedural requirements of 5 U.S.C. §7513(b)(2) clearly constitutes harmful error under 5 U.S.C. §7701(c)(2)(A)." In that case, the employee was given only one day to reply to a proposed suspension notice. However, in the instant cases, each of the proposal notices stated that the employee was

entitled to seven days in which to reply. Thus, there was no initial "denial" of a seven-day reply period as there was in Ratley. Each appellant raising this issue claims that the reply period was effectively shortened when the agency scheduled his or her oral reply on a date which was less than seven days after receipt of the proposal notice. The fact situations in these cases are substantially similar to the facts in the case of Johnson v. Department of the Treasury, MSPB Docket No. DC075209213 (8/27/82) where the agency issued its decision on a proposed suspension six days after the employee received the proposal notice. In its decision, the Board stated that the doctrine or harmful error was applicable to such a situation, and that the appellant in that case had

not demonstrated any prejudice to her ability to respond to the charges, nor shown that the effective shortening of the reply period "likely had a harmful effect upon the outcome before the agency." Id. at 4.

Of the 42 appellants who initially raised this issue, at least 19 of them (Agolini, Blackwell, Boyce, Crow, Donaldson, Farris, Gilbert, Hodges, Jacobs, Johnson, Kitchens, Lovins, Manges, Norman, N. O'Donnell, Prescott, Sweeney, Wilson and O. Wright), each received a copy of his or her proposal notice at least seven days prior to the date scheduled for his or her oral reply, as evidenced by postal receipts in the agency files, and/or statements made in appellants' petitions for appeal. I therefore dismiss the allegation with respect to

these appellants. Not one of the other 23 appellants in question has attempted to show that his oral reply would have been any different if he had been afforded additional time. Moreover, I note that the "script" of the oral reply was substantially the same in each case, regardless of the number of days between receipt of the proposal notice and the oral reply. I therefore find that even absent any "shortening" of the reply periods, it is unlikely that the agency would have reached a different conclusion with respect to any of the appellants in question, and that any error by the agency in this regard was harmless. Johnson, supra; Messersmith v. General Services Administration, MSPB Docket NO. DCO7528010253 (12/2/81).

25 of the appellants claim that they

"were denied the right to have a representative at their oral reply." In this regard, teach of these appellants submitted a written reply, and that he or she had been scheduled for the oral reply, and that he or she had been unable to remain at the agency past a certain time due to "personal reasons". Each written reply also stated that the appellant immediately requested a rescheduling of his or her oral reply, and that said request was denied. However, a written reply is hearsay, and does not constitute evidence of the matters stated therein in cases where there is an evidentiary hearing, and the party has an opportunity to testify. Pelham v. Department of the Treasury, MSPB Docket No. DAO75209140 (12/4/81). All of these appellants had such an opportunity, but only one, Mr.

Rushing, presented any testimony at the hearing. With respect to this issue, Mr. Rushing testified that at approximately 4:30 p.m. on the date scheduled for his oral reply, he was told by appellant Eugene O'Donnell that the PATCO representatives could not stay any longer. On cross examination, he admitted that he made no request for a rescheduling of his oral reply, and, in fact, had no contact with any agency officials on that day. He stated that he was told that this representative made an oral request for rescheduling, but that he was not present when this request was allegedly made. He also stated that he was informed the following day by one of the PATCO representatives that there would be no oral reply in his case.

Mr. Rushing's testimony is at variance with the statements made in his written reply that he immediately requested a rescheduling of his oral reply and that the agency denied said request. Moreover, he has submitted no direct evidence of any statements or actions by agency officials on the scheduled date of his oral reply, or thereafter, which would show that the agency denied him an opportunity to submit an oral reply. I therefore find that none of the appellants in question, including Mr. Rushing, has shown any error by the agency, as alleged. However, even assuming that the agency did deny any requests for rescheduling, and that said denials were not warranted under the circumstances, appellants have not shown that their oral replies, if made, would have been any different

than the replies made by other appellants hving PATCO representatives, at which the employees stood "mute" with respect to charges. In such an instance, it is unlikely that the agency would have reached a different conclusion with respect to any of these appellants. I therefore find that even if the agency erred, as alleged, such error was harmless. Messersmith, supra.

All of the appellants allege that the agency committed harmful procedural error in that they were denied a meaningful opportunity to make oral and written replies. They claim that the deciding officials were "stripped of the power to mitigate the penalty" by virtue of President Reagan's statement that any air traffic controllers who did not report for

duty within the grace period "have forfeited their jobs and will be terminated." See Air Traffic Controllers Strike, 17 Weekly Comp. Pres. Doc. 845 (Aug. 3, 1981). There is no dispute that once a deciding official determined that any given employee had participated in the strike and had not returned during the grace period, the only penalty which he could impose was removal. In this regard, the questions of mitigation and propriety of the penalty in these cases will be addressed below. However, with respect to the allegation of procedural error, the absence of authority to mitigate, as in a case involving a statutorily mandated penalty for a given offense, in no way diminishes the right to reply to charges set forth in a proposal notice. Woody v. General

Services Administration, MSPB Docket No. SFO7528110028 (6/2/81). The deciding officials in these cases had both the authority and the responsibility to determine whether each of the appellants had engaged in the conduct set forth in the charges. (GENOT 141, Appellants Ex. D). I find that each of the appellants had the opportunity to provide meaningful input into those determinations, had he or she so desired. I therefore find no error, as alleged.

Appellants also claim that they were subjected to de facto suspension during the notice periods of the removal actions. In this regard, they claim that they were "locked out" by the agency, and that the agency was therefore unwarranted in continuing to carry them as AWOL on those previously

scheduled duty days during the notice periods. Specifically, they contend that the agency's actions constituted suspensions of more than 14 days, which are appealable to the Board under the same statutory and regulatory provisions as the removal actions, and that the agency failed to afford them any procedural rights in connection therewith. As with any allegedly appealable action, the appellants have the burden of proof with respect to the Board's jurisdiction. 5 C.F.R. §1201.56(a)(2).

Under the agency's own regulations (Chapter 2, Paragraph 206, Section a(5) of FAA Order No. 3770.2B - Appellants' Exhibit AA) an employee is normally entitled to be retained in an

active duty status during the notice period of an adverse action. This presumes that the employee is ready and willing to work. The institution of adverse action proceedings does not suspend the agency's authority to administer its leave policies, including the charging of AWOL for unauthorized absences on previously scheduled duty days. In the instant cases, appellants were not "locked out", as that term is used in the private sector. The agency did not suspend its operations, but rather continued to perform its mission despite the drastic reduction in available manpower. Moreover, appellants knew that they were still employees of the agency during this time, particularly in light of the "proposed" nature of the notices which they received. None of these

appellants reported for duty or otherwise communicated wo the agency a willingness to return to work during the notice period. Had they done so, and if the agency had subsequently placed them, "for disciplinary reasons, in a temporary status without duties and pay", I could find that the agency had effected suspensions as defined by 5 U.S.C. §7501(2). However, the AWOL charges in question appear to have been nothing more than the logical consequences of appellants' continued unauthorized absences, and such charges, in and of themselves, are not appealable to the Board. Barger v. Department of Justice, MSPB Docket No. SEO75209019 (4/21/82); Marks v. Department of the Air Force, 3 MSPB 17 (1980). I therefore find that appellants have failed to meet their burden of proof

with respect to the Board's jurisdiction.

Notwithstanding my findings with respect to the Board's jurisdiction, I find appellants' "appeals" of the alleged suspension actions to be untimely. 5 C.F.R. §1201.22(b) requires that a petition for appeal be filed within 20 days after the effective date of the action being appealed. Appellants did not "identify" the alleged suspensions until after the regulatory time limit for appeal had expired. Appellants claim that their untimely "identification" is permissible under 5 C.F.R. §1201.24(a)(9) which states, in part, that "[f]ailure to raise a claim or defense in the petition shall not bar its submission later unless to do so would prejudice the rights of

the other parties and unduly delay the proceedings." However, appellants' removals were not based upon any absences subsequent to the issuance of the proposal notices, and the AWOL charges in question do not constitute a "claim or defense". They are, as appellants state, alleged suspensions. As such, they are subject to the same filing requirements as any other allegedly appealable actions, including the regulatory time limit for appeal. I therefore find that appellants' "appeals" of the alleged suspension actions were untimely filed, and that the record reflects no basis upon which to waive the time limit for appeal pursuant to 5 C.F.R. §1201.12.

Appellants claim that they were subjected to disparate treatment in

that some employees who were striking during the period of August 3-5, 1981 were allowed to return to work by reporting at or before the time of their "deadline shift". However, the agency made no determination as to whether an employee had been striking August 3, 4 or 5, 1981 if he or she reported during the grace period. (Appellants Ex. M, P 49, Agency's Answer to National Interrogatory No. 21). Absent such a determination by the agency or some other competent authority, appellants' claim is based upon the presumption of a fact not in evidence. Moreover, as in any case involving a claim of disparate treatment with respect to the imposition of discipline, appellants must show that the alleged disparity involved similarly situated employees. Kuhlmann v. Department of

Health and Human Services, MSPB Docket NO. SLO7528010027 (2/23/82). In this regard, appellants' own allegation sets forth a dissimilarity of situations with respect to one fact that is in evidence, i.e., appellants did not return. I therefore find no disparity, as alleged.

Unauthorized absence, by its very nature, disrupts the efficiency of the service. Chiaverini V. United States, 157 Ct. Cl. 371 (1962); Desiderio v. Department of the Navy, 4 MSPB 171 (1980). As cited by the agency, strike participation by a Federal employee is violative of both civil and criminal statutes. 5 U.S.C. §7311(3) provides that an individual may not hold a position in the Federal Government if he participates in a strike. This has been held to

establilsh removal as the mandatory penalty for strike participation. American Postal Workers Union v. United States Postal Service, 628 F. 2d 1280 (9th Cir. 1982). In Schapansky, supra, the Board did not answer the question as to whether it had authority to mitigate what appears to be a statutorily mandated penalty. Rather, the Board found that in light of the nature and gravity of the offense of striking, as well as the direct, deleterious effects such conduct has on the efficiency of the service, mitigation of the penalty would not be warranted under the standards set forth in Douglas v. Veterans Administration, MSPB Docket No. ATO75299006 (4/10/81). I therefore find that the agency's penalty selections in these cases were both reasonable and appropriate.

In summary, I find that the agency effected appellants' removals for such cause as will promote the efficiency of the service, 5 U.S.C. §7513(a).

DECISION

The agency's actions are hereby affirmed.

NOTICE

This is an initial decision and will become a final decision of the Merit Systems Protection Board on Feb. 18, 1983 unless a petition for review is filed with the Board.

Any petition for review must be filed with the Board within thirty-five (35)

calendar days after the issuance of this decision.

Any party to this appeal, the Director of the Office of Personnel Management (OPM) and the Special Counsel may file a petition for review of this decision with the Merit Systems Protection Board. The Director may request review only if he or she is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule or regulation under the jurisdiction of OPM. 5 U.S.C. §7701(e)(2). The petition must specifically identify the exception taken to this decision, cite the basis for exception, and refer to applicable law, rule or regulation.

The Petition for review must be filed

with the Office of the Secretary, Merit Systems Protection Board, Washington, D. C., 20419 no later than thirty-five (35) calendar days after issuance of this decision. If a petition for review is filed, an informational copy of it should be forwarded to this office.

The Board may grant a petition for review when a party submits written argument and supporting documentation which tends to show that:

(1) New and material evidence is available that despite due diligence was not available when the record was closed; or

(2) The decision of the presiding official is based upon an

erroneous interpretation of statute or regulation.

Under 5 U.S.C. §7703(b)(1)* an appellant has the right to seek judicial review of the Board's final decision in this appeal. A petition requesting such review must be filed with the United States Court of Appeals for the Federal Circuit no later than 30 days after appellant's receipt of the Board's final order or decision.

For the Board:

Joseph E. Clancy
Presiding Official

* As modified by § 127 of the Federal

Court Improvement Act of 1982, to be codified at 28 U.S.C. §1295(a)(9).

APPENDIX

HILLARD, FLORIDA,

NAME	CASE NO.
Agolini, Gerald L.	ATO75281F2351
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Wiggins, William N.	ATO75281F2489
Woodham, Sanford G.	ATO75281F2490
Wright, Richard A.	ATO75281F2491
Yochem, Larry D.	ATO75281F2493

JACKSONVILLE, FLORIDA, ATCT

Abrams, Richard P.	ATO75281F2498
Brakenwagen, Frank E.	ATO75281F0939
Britton, Harry A.	ATO75281F2502
Brooks, Jimmy L.	ATO75281F0940
Burchett, Rodney N.	ATO75281F2503
Carr, Robert J.	ATO75281F2504
Connors, Dennis B.	ATO75281F2505
Crow, John F.	ATO75281F2506
Denney, Douglass L.	ATO75281F2507
Eason, Dennis J.	ATO75281F2509
Farris, Frederick H.	ATO75281F2509
Hetherington, W. R. Jr.	ATO75281F2513
Hogan, John T.	ATO75281F2514
Lane, Hale A., Jr.	ATO75281F2515

Manges, James R.	ATO75281F0935
Medders, Jerry W.	ATO75281F2517
Nelson, Steven W.	ATO75281F0936
Norman, Leona O.	ATO75281F2519
Prescott, Kenneth V.	ATO75281F2522
Rast, Robert E.	ATO75281F2523
Russell, Edgar R.	ATO752812524
Sweeney, William F.	ATO75281F2526
Thomas, Arthur H., Jr.	ATO75281F2728
Whiteley, John C., Jr.	ATO75281F2729
Wilson, Harold	ATO75281F2529
Wright, Orville L.	ATO75281F2530

JACKSONVILLE (CRAIG), FLORDIA, ATCT

Manning, John A., Jr.	ATO75281F2495
O'Donnell, Nancy J.	ATO75281F2496
Sedgwick, William T.	ATO75281F2497

* Represented by David R. Siegel

FOOTNOTES

1 This decision encompasses the appeals of 94 former air traffic controllers, 91 of whom are represented by the firm of Leighton, Conklin, Lemov, Jacobs & Buckley. The remaining three appellants are represented by Mr. David E. Siegel. Appellants' names and case numbers appear in the attached appendix.